

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	8:04CR498
)	
v.)	
)	
DAVID WINTROUB,)	ORDER
)	
Defendant.)	
)	

This matter is before the Court on defendant's motion to dismiss (Filing No. 19), and the report and recommendation of the magistrate judge in the transcript (Filing No. 26). The Court has reviewed defendant's statement of objections (Filing No. 28) and brief (Filing No. 29) in opposition to said report and recommendation. Also pending is defendant's motion for special trial setting and acknowledgment of right to speedy trial (Filing No. 30).

The ruling on the motion to dismiss is controlled by *Costello v. United States*, 350 U.S. 359, 363 (1956), where the Supreme Court stated:

If indictments were to be held open to challenge on the ground that there was inadequate or incompetent evidence before the grand jury, the resulting delay would be great indeed. The result of such a rule would be that before trial on the merits a defendant could always insist on a kind of preliminary trial to determine the competency and adequacy of the evidence before the grand jury. This is not

required by the Fifth Amendment. An indictment returned by a legally constituted and unbiased grand jury, like an information drawn by the prosecutor, if valid on its face, is enough to call for trial on the charge on the merits. The Fifth Amendment requires nothing more.

Pursuant to 28 U.S.C. § 636(b)(1)(C), the Court has conducted a *de novo* review and finds that the report and recommendation of the magistrate judge should be approved and adopted by the Court. Accordingly,

IT IS ORDERED:

- 1) The report and recommendation of the magistrate judge is approved and adopted;
- 2) Defendant's motion to dismiss is denied;
- 3) Defendant's motion for special trial setting is granted. Trial of this matter is scheduled for:

Monday, July 18, 2005, at 9 a.m.

in Courtroom No. 5, Roman L. Hruska United States Courthouse, 111 South 18th Plaza, Omaha, Nebraska, or as soon thereafter as it may be reached. The ends of justice will be served by continuing this case and outweigh the interests of the public and the defendant in a speedy trial. The additional time between June 20, 2005, and July 18, 2005, shall be deemed excludable time in

any computation of time under the requirement of the Speedy Trial Act. 18 U.S.C. § 3161(h)(8)(A) & (B).

DATED this 20th day of June, 2005.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court